Supreme Court, U.S.
FILED

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No. ____

IN THE

Supreme Court of the United States

ETHEL KNIGHT KING A/K/A ANNIE ETHEL KING,
Petitioner,

v.

CITY OF BAINBRIDGE, GEORGIA,
Respondent.

Petition for a Writ of Certiorari to the Georgia Supreme Court

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PETITION FOR A WRIT OF CERTIORARI

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61 pp

QUESTION PRESENTED

Whether the zoning ordinance of the City of Bainbridge, Georgia which for safety reasons, based entirely upon construction standards, restricts the placement of HUD stickered manufactured housing units within the corporate limits of the City to mobile home parks and/or mobile home subdivisions is constitutional.

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PETITION FOR A WRIT OF CERTIORARI

The Petitioner, Ethel Knight King a/k/a Annie Ethel King, respectfully petitions for a Writ of Certiorari to review the judgment of the Georgia Supreme Court upholding the constitutionality of a zoning ordinance of the City of Bainbridge, Georgia which excludes mobile homes (ordinance term) from all locations within the corporate limits other than mobile home parks or mobile home subdivisions (ordinance terms).

OPINIONS BELOW

The opinion of the Georgia Supreme Court is reported at 276 Ga. 484, 577 S.E.2d 772, (2003).

JURISDICTIONAL STATEMENT

The Georgia Supreme Court entered its judgment on March 10, 2003, (App. A) Motion for Reconsideration was denied

April 11, 2003 (App. B). The jurisdiction of this Court is invoked under 28 U.S.C. § 1257.

CONSTITUTIONAL PROVISIONS INVOLVED

UNITED STATES CONSTITUTION

ARTICLE VI

This Constitution, and the Laws of the United States which shall be made in Pursuance thereof, and all Treaties made, or which shall be made, under the Authority of the United States, shall be the supreme Law of the Land; and the Judges in every State shall be bound thereby, any Thing in the Constitution or Laws of any State to the Contrary notwithstanding.

FIFTH AMENDMENT

No person shall be held to answer for a capital, or otherwise infamous crime, unless on a presentment or indictment of a Grand Jury, except in cases arising in the land or naval forces, or in the Militia, when in actual service in time of War or public danger, nor shall any person be subject for the same offense to be twice put in jeopardy of life or limb; nor shall he be compelled in any criminal case to be a witness against himself, nor be deprived of life, liberty, or property, without due process of law; nor shall private property be taken for public use, without just compensation.

FOURTEENTH AMENDMENT

All persons born or naturalized in the United States and subject to the jurisdiction thereof, are citizens of the United States and of the State wherein they reside. No State shall make or enforce any law which shall abridge the privileges or immunities of citizens of the Untied States; nor shall any State deprive any person of life, liberty, or property, without due process or law; nor deny to any person within its jurisdiction the equal protection of the laws.

STATEMENT OF THE CASE

Petitioner owns a 2.24 acre parcel of land in Decatur County, Georgia. Though Petitioner's property is not entirely within the corporate limits of the City of Bainbridge, the city limits does run through Petitioner's parcel. Petitioner was not aware of precisely where the city limits traversed the subject property. Petitioner has never paid city property taxes on the subject property.

Petitioner obtained a mobile home permit, an electrical permit, and an air conditioning permit from the County and placed a mobile home on the subject property.

The City of Bainbridge has a zoning ordinance (App. C) which prohibits the placement of a mobile home ANY-WHERE within the corporate limits of city other than a mobile home park or mobile home subdivision.

When Petitioner did not remove the mobile home as the City demanded, a suit was filed against Petitioner. Petitioner answered the suit contending:

> "The ordinance sought to be enforced by this cause of action on its face, exceeds the police powers of Plaintiff and this violates substantive due process provisions of the U.S. Constitution as amended as well as the Constitution of the State of Georgia as amended."

After a hearing the trial court entered an Order (App. D) finding the ordinance constitutional and enjoining Petitioner from continuing to violate the ordinance. Petitioner appealed the trial court's order to the Georgia Supreme Court which affirmed the trial court (App. A). This petition followed.

REASONS FOR GRANTING THE PETITION

A single nationally authoritative decision is desirable to announce the law of the land not only to reinforce those lower court decisions which were correctly decided but to also let the air out of decisions in conflict therewith.

For example the decision of *Scurlock v. Lynn Haven*, 858 F.2d 1521,1525 (11th Cir. 1988) appears to be correctly decided, holding the City of Lynn Haven's zoning ordinance impairs the federal superintendence of the mobile home industry. Yet, other courts cite it for recognizing that a city could undoubtedly limit a particular residential zone to conventionally built residences, and exclude all mobile homes. *Burton v. City of Alexander City, Alabama*, 2001 WL 527415 (M.D. Ala. 2001) and *Lauderbaugh v. Hopewell Township*, 319 F.3d 568 (2003) (3rd Cir).

Manufactured housing is aberrant housing that is rationally disfavored. A city may exclude such homes altogether. *Barre Mobile Home Park, Inc. v. Town of Petersham*, 592 F. Supp. 633, 636 (D. Mass. 1984), aff'd, 767 F.2d 904 (1st Cir. 1985)

What lies behind a zoning ordinance? Safety and Construction standards, aesthetics, property value/tax base considerations, or is it a prejudice based upon economic capacity against those poor people who cannot afford better.

Petitioner submits that federally regulated housing cannot be constitutionally discriminated against based upon any of the foregoing reasons.

Burton (supra) and *Lauderbaugh* (supra) are not the only cases in conflict with *Scurlock* (supra). *Texas Manufactured Housing Assn. v. City of Nederland*, 101 F.3d. 1095 (5th Cir. 1996) and *Georgia Manufactured Housing Assn., Inc. v. Spalding County*, 148 F.3d 1304 (11th Cir. 1998) are said to involve ordinances intended to protect property values and promote aesthetics rather than regulate safety and construction standards. Such zoning ordinances actually impair federal superintendence of the mobile home industry when the ordinance excludes houses built to HUD specifications from being located within the corporate limits in favor of other manufactured homes built to more stringent construction standards.

Other cases which deny preemption include *City of Brookside Village v. Comeau*, 633 S.W.2d 790 (Tex. 1982); *CMH Mfg., Inc. v. Catawba County*, 994 F. Supp. 697 (W.D.N.C. 1988); *Gackler Land Co., Inc. v. Yankee Springs Tp.*, 427 Mich. 562, 398 N.W.2d 393 (1986).

In fact, the *Gackler* (supra), decision has been criticized by federal district courts in *Colorado Manufactured Housing Assn. v. Board of County Commissioners of Pueblo County, Colorado*. 946 F. Supp. 1539 (D. Colo. 1996) and *Michigan Manufactured Housing Assn v. Robinson Tp.*, 73 F. Supp. 2d 823 (W.D. Mich. 1999). These two courts took issue with the reasoning in *Gackler* that the ordinance was not preempted because its purpose was for regulating land use. The federal courts pointed out that under this reasoning, an ordinance could impose very strict building and safety standards for manufactured housing that clearly conflicted with the federal law, and preemption would be inapplicable because the ordinances overall "purpose" was regulating land use.

Going a step further, in *Texas Manufactured Housing Assn., Inc. v. City of Nederland,* 101 F.3d 1095 (5th Cir. 1996) even though the local ordinance and testimony established that manufactured homes that met the federal standards would not be allowed on private residential lots outside of trailer parks because such homes would not comply with the local building code. The court there held that the purpose of the ordinance was protection of property values and did not *expressly link* its provisions in any way to local safety and construction standards. Under this *Texas* (supra) reasoning only expressly linking an ordinance to safety and construction standards invokes preemption.

Given the current confused state of the law any given court on any given day can find a precedent for whatever decision it chooses to make.

In the instant case the factual situation is virtually identical to the *Scurlock* (supra) facts. Yet, the Georgia Supreme Court (less the two Justices who dissented based upon federal preemption) found the Bainbridge ordinance constitutional.

Testimony given by witnesses called by the City, including the city manager (App. D), established that the exclusive reason for the ordinance being adopted was safety. There was considerable testimony about mobile homes (ordinance term) not being built to the standards of the Southern Building Code, etc., that a mobile home was a torch waiting to be lit, but if a mobile home was built to comply with "those building codes" (referring to the Southern Building Code, the National Electric Code, the Standard Mechanical Code, the Georgia State Plumbing Code, and the Standard Plumbing Code) or had a DCA sticker rather than a HUD sticker it would be permitted. It is clear from the testimony that the ordinance is an effort to regulate construction standards of mobile homes.

CONCLUSION

This Petition for Certiorari should be granted to resolve conflicts in the holdings of many state and federal courts, to establish a national view of federal preemption concerning the regulation of construction and safety standards for manufactured housing units, and to protect the home ownership rights of poor people.

Respectfully submitted,

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APPENDIX A

SUPREME COURT OF GEORGIA

No. S02A1685.

KING,

v.

CITY OF BAINBRIDGE.

March 10, 2003.
Reconsideration Denied April 11, 2003.

FLETCHER, *Chief Justice.*

The City of Bainbridge filed suit against Ethel King to enforce its zoning ordinance that precluded her placement of a mobile home in an R-2 residential district. King contended that the City's zoning ordinance was unconstitutional and that it was preempted by federal law. The trial court rejected these arguments and King appeals. Because the City's ordinance restricting mobile homes to mobile home parks and subdivisions is not preempted by federal law and is not unconstitutional, we affirm. Ethel King owns a tract of land, the majority of which lies within the city limits of Bainbridge, Georgia and is zoned R-2. The City's zoning ordinance specifically excludes mobile homes from R-2 districts. In 1995, three days after placing her mobile home on her property, the City informed King that she was in violation of the City's zoning ordinance. She was also informed that the mobile home could be legally placed on a portion of her property falling outside the city limits. Instead of complying with the City's demand to move the mobile home, King

installed electricity, a septic tank, and a porch, all without first obtaining the required permits or seeking an amendment to the zoning ordinance. When the City filed suit in January 1996, King defended on the basis that the zoning ordinance violated her substantive due process rights. After a reversal by this Court on a procedural ground,[1] the trial court ultimately held that the zoning ordinance was constitutional and was not preempted by the National Manufactured Housing and Safety Standards Act of 1974 ("the Act").[2]

Federal Preemption

The Act sets minimum standards for the construction of manufactured homes and was passed to reduce injuries, deaths, insurance costs, and property damage related to manufactured homes and to improve the quality of manufactured homes.[3] "Manufactured homes" are built on a permanent chassis,[4] and are also referred to as mobile homes in the regulations and in common parlance.[5] The regulations promulgated under the Act by the United States Department of Housing and Urban Development (HUD) require that each mobile home bear a special label certifying that it is built in compliance with HUD safety standards and has been inspected in accordance with HUD regulations.[6] The Act also recognizes "modular homes." In contrast to mobile homes, modular homes are built on a temporary chassis that is removed upon installation on a permanent foundation.[7] The

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[1] *King v. City of Bainbridge*, 272 Ga. 427, 531 S.E.2d 350 (2000).

[2] 42 U.S.C. §§ 5401-5426.

[3] 42 U.S.C. § 5401.

[4] 42 U.S.C. § 5402(6), 24 C.F.R. § 3280.2.

[5] 24 C.F.R. § 3282.8.

[6] 24 C.F.R. § 3280.11.

[7] 42 U.S.C. § 5403(f), 24 C.F.R. § 3282.12.

Act specifically provides for the exclusion of modular homes from its coverage.[8]

The preemptive scope of the Act over safety and construction standards for mobile homes is expressly defined in the Act: Whenever a Federal manufactured home construction and safety standard established under this [chapter] is in effect, no State or political subdivision of a State shall have any authority either to establish, or to continue in effect, with respect to any manufactured home covered, any standard regarding construction or safety applicable to the same aspect of performance of such manufactured home which is not identical to the Federal manufactured home construction and safety standard.[9]

Thus, any attempt to place higher construction standards on mobile homes than those established under the Act is invalid. However, nothing in the Act prevents localities from excluding mobile homes from certain zoning districts. The City's zoning ordinance creates such an exclusion. Under the City's ordinance, mobile homes must bear the HUD certification label and these homes are specifically excluded from the R-2 zoning district: "Permitted uses. (a) Any use permitted in the R-1 residential district, except mobile homes." By excluding HUD-certified mobile homes from the R-2 district, the City has not imposed any safety or construction requirement on the homes, but has simply determined that this type of housing is inappropriate in an R-2 district. The Eleventh Circuit has expressly held that "[u]ndoubtedly [a city] could limit Zone R-AA to conventionally-built residences and exclude mobile homes." [10] Because the City has not infringed on the federal government's control

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[8] *Id.*

[9] 42 U.S.C. § 5403(d).

[10] *Scurlock v. City of Lynn Haven,* 858 F.2d 1521, 1525 (11th Cir.1988).

over safety and construction standards for mobile homes, its zoning ordinance is not preempted by the Act.

King argues that the City imposes safety and construction standards on mobile homes by permitting "a mobile home with a DCA sticker" in R-2 districts. This argument fails to recognize the factual and legal distinction between a modular home and a mobile home. Modular homes are separately defined in the City's ordinance and are built in accordance with OCGA §§ 8-2-110—8-2-121 and the rules of the Department of Community Affairs. The requirements of OCGA § 8-2-110, *et seq.* are virtually identical to the requirements for a modular home exempt under the federal act.[11] Thus, a modular home is not simply a mobile home with a DCA sticker; instead modular homes and mobile homes are distinct uses, which both the state and federal statutes recognize, and the City's different treatment of them in its zoning ordinance is not an infringement on federal safety standards for mobile homes.

Courts considering similar zoning ordinances have concluded that they are not preempted by the Act. For example, in *Bibco Corporation v. City of Sumter,*[12] the Supreme Court of South Carolina held that the Act did not preempt an ordinance excluding HUD-certified mobile homes from a specific zoning district, but permitting modular homes built under South Carolina's Modular Building Construction Act.[13]

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[11] 42 U.S.C § 5403(f); 24 C.F.R. § 3282.12; OCGA § 8-2-110—8-2-121; Ga. Rule and Regs. 110-2-7 *et seq. See also Hill v. Duncan,* 249 Ga.App. 342, 548 S.E.2d 83 (2001) (using "modular" to describe home built under OCGA § 8-2-110, *et seq.* and Atty. Gen. Op. 84- 4 (referring to OCGA § 8-2-110 *et seq.* as a "modular home statute")).

[12] 332 S.C. 45, 504 S.E.2d 112 (1998).

[13] *See also Texas Manufactured Housing Ass'n v. City of Nederland,* 101 F.3d 1095, 1100-1101 (5th Cir.1996) (ordinance restricting mobile

King's reliance on *Scurlock v. City of Lynn Haven*[14] is inapposite because of the significant difference between Lynn Haven's and Bainbridge's zoning ordinances. Lynn Haven's ordinance provided no specific uses or exclusions in the relevant zoning district. Instead, the ordinance relied solely on its safety code to distinguish appropriate uses. The Eleventh Circuit concluded that the ordinance would require greater safety and construction standards on mobile homes in that district, and therefore, federal law preempted the local ordinance.[15] The court contrasted the impermissible Lynn Haven statute with a permissible one that specifically excluded mobile homes from a particular zoning district.[16] The City does not rely on its safety codes, as Lynn Haven did, but instead excludes HUD-certified mobile homes from R-2 districts regardless of safety and construction standards.

King also relies heavily upon the testimony of one City official that a mobile home that could meet the City's building codes could be placed in an R-2 district. The official's testimony is in conflict with the plain language of the ordinance and is unsupported by any evidence that the City has ever applied the ordinance except as it is written. Therefore, this testimony fails to support the argument that the ordinance conflicts with federal law.[17]

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homes to mobile home parks not preempted); *Brookside Village v. Comeau*, 633 S.W.2d 790 (Tex.1982) (same); *Burton v. City of Alexander City*, No. Civ. A.99-D-1233-E, 2001 WL 527415 (M.D.Ala. March 20, 2001) (same).

[14] 858 F.2d 1521 (11th Cir.1988).

[15] *See also Colorado Manufactured Housing Ass'n v. County of Pueblo*, 946 F.Supp. 1539, 1552-1553 (D.Colo.1996) (ordinances that permit mobile homes in residential districts if they also meet Uniform Building Code standards are preempted).

[16] 858 F.2d at 1525.

[17] *See Clark v. Winnebago County*, 817 F.2d 407, 409 n. 4 (7th Cir. 1987) (County's position that mobile homes not excluded if they meet

Additionally, we acknowledge the Catch-22 in which the City finds itself. Under *Cannon v. Coweta County,*[18] which did not address the preemption issue, this Court held that a zoning ordinance that restricted mobile homes to mobile home parks, based on aesthetic and protection of property values concerns, was unconstitutional.[19] Instead, the Court held that a municipality can only regulate the placement of mobile homes based on construction standards.[20]

Constitutionality of Ordinance

King also contends that the zoning ordinance is unconstitutional because it exceeds the police powers of the City under *Cannon.*[21] We now conclude that *Cannon* was wrongly decided and hereby overrule it. A zoning ordinance does not exceed a city's police powers unless it is "clearly arbitrary and unreasonable, having no substantial relation to the public health, safety, morals or general welfare."[22] Courts routinely uphold zoning ordinances broadly restricting mobile home placement.[23] A wide variety of rationales have been

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building code untenable in light of ordinance providing that mobile homes may not be placed outside mobile home district).

[18] 260 Ga. 56, 389 S.E.2d 329 (1990).

[19] *Id.* at 60, 389 S.E.2d 329.

[20] *Id.* (municipality can regulate placement of mobile homes only if they meet standards "designed to assure that the home will compare favorably with other housing that would be allowed on that site," quoting case that held that acceptable standards included insulation, adequacy of plumbing, and windstorm damage). *See Robinson Township v. Knoll,* 410 Mich. 293, 302 N.W.2d 146, 152 (1981).

[21] *Id.*

[22] *Village of Euclid v. Ambler Realty Co.,* 272 U.S. 365, 395, 47 S.Ct. 114, 71 L.Ed. 303 (1926).

[23] *See, e.g., Town of Scranton v. Willoughby,* 306 S.C. 421, 412 S.E.2d 424 (S.C.1991); *McCollum v. City of Berea,* 53 S.W.3d 106 (Ky.App. 2000) and cases cited in n. 17-29. See also Rathkoph, The Law of Planning and Zoning § 19.04; Annot., 17 A.L.R.4th 106, 111 § 3 (1982).

found sufficient to justify these ordinances: preserving land for low density, single-family dwellings,[24] protection of property values,[25] guarding against increased crime,[26] guarding against traffic congestion,[27] maintaining aesthetics,[28] regulating population density,[29] preventing waste and sewage problems,[30] regulating quality of housing stock,[31] and concerns about wind vulnerability.[32]

The evidence in this case showed that the City's purpose in restricting mobile home placement was to regulate the quality of housing stock and promote general safety concerns. These reasons are not arbitrary or unreasonable and bear a substantial relation to the public health, safety, and general welfare. Therefore, the City's ordinance is not unconstitutional.

Judgment affirmed.

All the Justices concur, except BENHAM and THOMPSON, JJ., who dissent.

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[24] *Bibco,* 504 S.E.2d at 116-117

[25] *Texas Manufactured Housing Ass'n at 1106; Colorado Manufactured Housing Ass'n v. City of Salida,* 977 F.Supp. 1080, 1085 (D.Colo.1997).

[26] *Bibco,* 504 S.E.2d at 116-117.

[27] *Bibco,* 504 S.E.2d at 116-117.

[28] *Clark,* 817 F.2d at 409.

[29] *Duggins v. Town of Walnut Cove,* 63 N.C.App. 684, 306 S.E.2d 186 (N.C.App.1983).

[30] *Brookside Village,* 633 S.W.2d 790; *Barre Mobile Home Park v. Town of Petersham,* 592 F.Supp. 633, 636 (D.Mass.1984).

[31] *Burton,* 2001 WL 527415, * 10.

[32] *Grant v. Seminole County,* 817 F.2d 731, 736 (11th Cir.1987).

THOMPSON, *Justice*, dissenting.

I believe the City's zoning ordinance is an unconstitutional encroachment upon federal law. Accordingly, I dissent.

1. Federal preemption occurs when a federal law conflicts with a state law, including zoning ordinances and other laws created by municipalities. See *Scurlock v. City of Lynn Haven,* 858 F.2d 1521, 1524 (11th Cir.1988). In such cases, if the two conflicting laws cannot be reconciled to serve the full purposes and objectives of Congress in passing the federal law, the supremacy clause dictates that the state law must give way to the federal law. States do not have the constitutional power to legislate in federally preempted areas of law. *Id.* at 1523-1524. At issue before us is a conflict between a City of Bainbridge zoning ordinance and 42 U.S.C. § 5403(d), which provides:

> Whenever a Federal [mobile] home construction and safety standard established under this chapter is in effect, no State or political subdivision of a State shall have authority either to establish, or to continue in effect, with respect to any [mobile] home covered, any standard regarding construction or safety applicable to the same aspect of performance of such [mobile] home which is not identical to the Federal [mobile] home construction and safety standard.

This statute clearly evidences congressional intent to "preclude[ ] states and municipalities from imposing construction and safety standards upon mobile homes that differ in any respect from those developed by HUD." (Emphasis omitted.) *Scurlock,* supra.

The evidence presented in this case demonstrated that modular homes, which are prefabricated, but are not built on a chassis, could be placed in an R-2 zoning district if they bore a Department of Community Affairs ("DCA") certification sticker; that a DCA sticker certifies that a modular

home is built in accordance with the Georgia Industrialized Building Act; and that, aesthetically, as long as a "skirt" is placed around a mobile home, there is very little, if any, difference between a modular home and a mobile home. There was also evidence that modular homes bearing a DCA sticker are safer than mobile homes bearing a HUD sticker; and that the City adopted its ordinance restricting mobile homes to mobile home parks and subdivisions for safety purposes. In this regard, the city manager testified that the City would not permit a mobile home with only a HUD sticker in an R-2 zoning district; but it would permit a mobile home with a DCA sticker in such a district because it would have been "built stronger and safer."

In *Scurlock*, a City of Lynn Haven zoning ordinance permitted mobile homes that met the City's building codes to be placed anywhere within city limits; mobile homes with only a HUD sticker, however, were restricted to licensed trailer parks. The City argued that the ordinance passed constitutional muster because mobile homes were built to a lesser standard and were less safe. The court determined that the City's rationale for limiting the siting of mobile homes was impermissible because safety standards for such homes were preempted by federal law. The court reasoned that if HUD has set the standard for safe construction, a municipality cannot create barriers to the full implementation of that standard. *Id.* at 1524-1525.

Like the zoning ordinance in *Scurlock*, supra, the purpose and effect of the zoning ordinance in this case are to limit the siting of mobile homes based solely on their manner of construction. Because this zoning rationale impedes the full implementation of federal building standards, the City's zoning ordinance is unconstitutional.

True, on its face, the zoning ordinance appears to restrict the location of mobile homes appropriately. However, as noted above, the City enacted, and intends to enforce, its

ordinance on the basis of construction and safety concerns. Thus, the ordinance was enacted as a thinly veiled attempt to circumvent the HUD safety and construction standards,[1] and to frustrate the federal objective,[2] to wit: the regulation of mobile home safety standards.

When all is said and done, it is clear that in enacting its ordinance the City was motivated by a desire to legislate in the mobile home safety arena; and the City's interpretation of the ordinance gives it that effect. The ordinance should not be saved simply because it appears to be regular on its face. *See Hunter v. Underwood,* 471 U.S. 222, 105 S.Ct. 1916, 85 L.Ed.2d 222 (1985) (although law disenfranchising persons convicted of crimes appears neutral on its face, it will be held to violate equal protection if its original enactment was motivated by a desire to discriminate and it continues to have that effect).

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[1] Compare *Texas Manufactured Housing Assn. v. City of Nederland,* 101 F.3d 1095, 1100 (5th Cir.1996).

[2] In determining preemption *vel non,* it is the practical impact of the ordinance that counts. *See Gade v. National Solid Wastes Mgmt. Assn.,* 505 U.S. 88, 105-106, 112 S.Ct. 2374, 120 L.Ed.2d 73 (1992). *See also Perez v. Campbell,* 402 U.S. 637, 651-652, 91 S.Ct. 1704, 29 L.Ed.2d 233 (1971), in which the Supreme Court observed: We can no longer adhere to the aberrational doctrine . . . that state law may frustrate the operation of federal law as long as the state legislature in passing its law had some purpose in mind other than one of frustration. Apart from the fact that it is at odds with the approach taken in nearly all our Supremacy Clause cases, such a doctrine would enable state legislatures to nullify nearly all unwanted federal legislation by simply publishing a legislative committee report articulating some state interest or policy—other than frustration of the federal objective—that would be tangentially furthered by the proposed state law . . . . [A]ny state legislation which frustrates the full effectiveness of federal law is rendered invalid by the Supremacy Clause. *In this case, the articulated purpose of the ordinance was one which frustrates the federal objective.* When pressed at oral arguments, counsel for the City was unable to provide any rationale other than safety for limiting the placement of mobile homes.

2. In *Cannon v. Coweta County*, 260 Ga. 56, 389 S.E.2d 329 (1990), this Court held that an ordinance restricting the placement of mobile homes exceeds the police power *if it is enacted to protect property values.* Unlike the ordinance in *Cannon,* the ordinance in this case was enacted for safety reasons. Thus, this case does not present a *Cannon* issue, and I see no need to debate its merits at this time.

I am authorized to state that Justice BENHAM joins in this dissent.

APPENDIX B

SUPREME COURT OF GEORGIA

Case No. S02A1685
Atlanta, April 11, 2003

The Honorable Supreme Court met pursuant to adjournment. The following order was passed:

ETHEL KNIGHT KING a/k/a ANNIE ETHEL KING,

v.

CITY OF BAINBRID.

Upon consideration of the Motion for Reconsideration filed in this case, it is ordered that it be hereby denied.

All the Justices concur, except Benham and Thompson, JJ., who dissent.

SUPREME COURT OF THE STATE OF GEORGIA
Clerk's Office, Atlanta

I herby certify that the above is a true extract from the minutes of the Supreme Court of Georgia.

Witness my signature and the seal of said court hereto affixed the day and year last above written.

Sherie M. Welch, Clerk

APPENDIX C

IN THE SUPERIOR COURT OF DECATUR COUNTY
STATE OF GEORGIA

[Filed Sep. 27, 2001]

Civil Action File No. 96-V-040

THE CITY OF BAINBRIDGE, GEORGIA,
Plaintiff,

vs.

ETHEL KNIGHT KING, a/k/a ANNIE ETHEL KING,
Defendant.

ORDER ON PLAINTIFF'S COMPLAINT FOR INTERLOCUTORY AND PERMANENT INJUNCTION

The Georgia Supreme Court having reversed this Court's Order of August 24, and remanded the case to this Court for consideration of the constitutional issues raised by Defendant, and upon remand, the Parties having waived the opportunity to present additional evidence or argument, and each of the Parties having agreed to submit the matter to the Court for decision based on the existing record, the Court makes the following Findings of Fact and Conclusions of Law:

FINDINGS OF FACT

-1-

Technically, there is no such thing as a "mobile home." The proper names for residences commonly called "mobile homes" that have been manufactured since 1976 and are located in Georgia are either industrialized buildings that bear

a *DCA* sticker or manufactured housing that bear a *HUD* sticker (T., pg. 68, lines 15-25; T., pg. 74, lines 2-9; T., pg. 133, lines 10-25; T., pg. 154, lines 18-20).

-2-

A layman in the field or an ordinary citizen could not distinguish between a "mobile home" with a *DCA* sticker and a "mobile home" with a *HUD* sticker while it is being transported nor could they distinguish between them after it has been set up if it had a "skirting" around it (T., pg. 70, lines 6-16; T. pg. 72, lines 6-9).

-3-

Defendant owns, and has owned since May 27, 1986, a tract of land in Decatur County, Georgia, that is shown on Decatur County Tax Map B-80 as Parcel 14 F. A part of said land is within the City Limits of the City of Bainbridge. (Plaintiff's Exhibit 1—reduced Tax Map B-80; Plaintiffs Exhibit 2—part of Tax Map B-80 including Defendant's property; Plaintiff's Exhibit 7--Deed from Thurman L. Knight, Jr., as Executor under the Last Will and Testament of Thurman L. Knight, Sr., to Defendant dated May 27, 1986, and recorded in Deed Book G-14, Page 411, Land Records of Decatur County, Georgia; Plaintiffs Exhibit 6--plat of survey by Grogan; Plaintiffs Exhibit 3-plat of Defendant's property on which witness Seymour plotted the City Limit's line).

-4-

The City Limit's sign is near Defendant's property and the Grogan survey shows that a substantial part of Defendant's property, and all of the road frontage of Defendant's property, is within the City Limits of Bainbridge (Plaintiff's Exhibit 6; T. pg. 26, lines 12-22).

-5-

Pursuant to Article IX of the Zoning Ordinance of the City of Bainbridge, the part of Defendant's property that lies

within the City of Bainbridge is zoned as a "R-2 Two Family and Multiple Family Residential District" (Plaintiff's Exhibit 8; Plaintiffs Exhibit 10).

-6-

Pursuant to Article IX of the Zoning Ordinance of the City of Bainbridge, mobile homes bearing a DCA sticker are permitted in "R-2 Two Family and Multiple Family Residential Districts," but mobile homes bearing a HUD sticker are not permitted in "R-2 Two Family and Multiple Family Residential Districts" (Plaintiff's Exhibit 8, pg. 27, Sect. 9.02a; Plaintiff's Exhibit 8, pg. 4 definition of Mobile Home and definition of Modular Home).

-7-

A permit from the City of Bainbridge is required in order to put any house, stick-built, mobile home, modular home, industrialized building, manufactured housing, or any other kind of building in the City of Bainbridge. Defendant never made an application to the City for a permit to put the house in question or any other house on her property that is located within the City of Bainbridge, and no such permit was ever issued (T., pg. 104, lines 20 thru pg. 105, line 3; T., pg. 40, lines 9-18; pg. 210, line 23 thru pg. 211, line 8; Plaintiffs Exhibit 8, pg. 51, Sect. 21.02 and 21.03).

-8-

On September 2, 1995 (Saturday before Labor Day), Defendant, without obtaining a permit from the City of Bainbridge to do so, caused a "mobile home" bearing a HUD sticker to be delivered to a part of her land that was within the City Limits of Bainbridge (T., pg. 213, lines 19-22; Plaintiffs Exhibit 3; T., pg. 101, line 20 thru pg. 102, line 1).

-9-

On Tuesday, September 5, 1995, Charles Seymour, a building officer of the City of Bainbridge, went to the property of

Defendant and found a mobile home with a HUD sticker sitting on the Defendant's property (T., pg. 30, line 2 thru pg. 31, line 17).

-10-

On September *5, 1995,* Charles Seymour notified the Defendant that the mobile home with the HUD sticker was on the part of her land that was within the City Limits and that it had to be moved (T., pg. 31, lines 11-17).

> (See Findings of Fact 5 and 6 that the zoning on the part of Defendant's land that is within the City Limits permitted mobile homes with a DCA sticker, but did not permit mobile homes with a HUD sticker.)

-11-

On September 5, 1995, there had been no improvements on the property other than the delivery of the mobile home with the HUD sticker to the property, except that the power company had started to set up a pole, (T., pg. 31, line 18 thru pg. 32, line 1) and except that Defendant contends that "the septic tank was already in" (T., pg. 207, lines 19-25).

-12-

On September 6, 1995, at the request of Mr. Knight (Defendant's brother), Charles Seymour, John Busby, who was employed as a buildings inspector part-time for the City of Bainbridge under the supervision of Charles Seymour, and Mr. Knight (Defendant's brother), with the benefit of plats of the property supplied by Mr. Knight (Defendant's brother) (Plaintiff's Exhibit 4), measured the property and agreed as to the location of the City Limits line, which when plotted on the plat provided by Mr. Knight, showed that approximately 90 percent of the mobile home was within the City Limits of Bainbridge (Plaintiff's Exhibit 3; T., pg. 32, line 24 thru pg. 36, line 9).

-13-

On September 6, 1995, Mr. Seymour, Mr. Bushy, and Mr. Knight, after making the necessary measurements, determined that the mobile home could be placed on Defendant's property outside of the City Limits and still have the proper setbacks (T., pg. 36, lines 9-19).

-14-

On September 6, 1995, Mr. Seymour again informed Defendant that the mobile home with the HUD sticker was within the City Limits and would have to be moved (T., pg. 37, lines 2-8).

(See Findings of Fact 5 and 6 that the zoning on the part of Defendant's land that is within the City Limits permitted mobile homes with a DCA sticker, but did not permit mobile homes with a HUD sticker.)

-15-

A permit is required from the City of Bainbridge before electricity can be connected to any building within the City Limits of Bainbridge; a permit from the City of Bainbridge is required before the installation of air conditioning in any building located in the City Limits of Bainbridge; a permit is required from the City of Bainbridge before the installation of a septic tank and the construction of a drain field within the City Limits of Bainbridge (T., pg. 40, line 9 thru pg. 41, line 15).

-16-

After having received numerous warnings from the City that the mobile home with the HUD sticker was within the City Limits and must be moved, Defendant, without obtaining a permit from the City of Bainbridge to do so, caused electricity to be installed, air conditioning to be installed, and a porch to be added to the mobile home (T., pg 209, line 17 thru pg. 210, line 8).

-17-

Defendant neither applied for nor obtained any permits from the City of Bainbridge either before or after causing the mobile home to be placed on her land within the City of Bainbridge, causing electricity to be supplied to the mobile home, causing the air conditioning to be installed in the mobile home, causing the septic tank to be installed on the premises, and causing the drain field to be constructed on the premises (T., pg. 104, line 20 thru pg. 106, line 2).

-18-

The City of Bainbridge has never declined any application by Defendant to place the home in question or any kind of home on Defendant's property that is located within the City Limits of Bainbridge (T., pg. 217, line 24 thru pg. 218, line 1;T., pg. 105, lines 4-7).

-19-

Section 21.05 thru Section 21.8 of the Zoning Ordinance of the City of Bainbridge provides a procedure for the amendment of the Zoning Ordinance upon application of a citizen or a property owner (Plaintiffs Exhibit 8). Defendant has never filed an application pursuant to the Zoning Ordinance of the City of Bainbridge for the rezoning of her property that lies within the City Limits of Bainbridge (T., pg. 217, line 24 thru pg. 218, line 8).

-20-

At all times relevant to this case, the Southern Building Code, the National Electric Code, the Standard Mechanical Code, the Georgia State Plumbing Code, and the Standard Plumbing Code were in effect in the City of Bainbridge as a part of the Ordinances of the City of Bainbridge (T., pg. 15, lines 9-18; T., pg. 18, lines 2-20).

-21-

The duties of an inspector in the Building Department of the City of Bainbridge are to inspect remodeling, repair, and new construction within the City of Bainbridge to make sure that all buildings and construction comply with the various building codes (T., pg. 61, lines 1015).

-22-

The purpose of requiring construction in accordance with the various building codes and to inspect to confirm and enforce compliance with the various building codes is to protect the lives and the safety of the citizens of the City of Bainbridge (T., pg. 108, lines 3-8; T., pg. 79, line 21 thru pg. 80, line 2).

-23-

Mobile Homes bearing the DCA sticker are subject to and built in accordance with the identical building codes that are enforced in the City of Bainbridge (T., pg. 85, line 20 thru pg. 86, line 1).

-24-

Mobile Homes bearing the HUD sticker are built to a minimum standard (T., pg. 134, line 24) and to less stringent building codes as to both safety and strength than the Mobile Homes codes that are enforced in the City of Bainbridge and which apply to buildings bearing the DCA sticker (T., pg. 85, line 20 thru pg. 86, line 12).

-25-

Due to construction under the more stringent codes, the mobile home bearing the DCA sticker is safer for the citizens of Bainbridge than is a building bearing the HUD sticker (T., pg. 85, lines 14-19), and Plaintiff adopted the zoning ordinance to protect the lives of its citizens and for safety purposes (T., pp. 108-109).

-26-

HUD standards and requirements are "unconcerned with a locality's imposition of construction or safety standards that do not directly diverge from a specific, identifiable HUD standard[s]" and requirements. See *Burton v. City of Alexander City*, Ala., 2001 WL 527415 at 7 (M.D. Ala. 2001).

-27-

HUD standards, regulations, and requirements do not prevent a locality from regulating the siting of manufactured homes within its jurisdiction without regard to the federally-required construction and safety standards of the home itself. See *Burton* at 7.

-28-

Defendant has failed to prove that the City of Bainbridge acted on the basis that Defendant's "mobile home" met HUD standards but not the Southern Building Code, the National Electric Code, the Standard Mechanical Code, the Georgia State Plumbing Code, or the Standard Plumbing Code. See *Burton* at 7.

-29-

On proper application to the City of Bainbridge, a permit will be issued for any home, including a Mobile Home, that complies with all of the City of Bainbridge building codes to be placed in any residential zone in the City of. Bainbridge (T., pg. 107, line 5 thru pg. 108, line 2).

-30-

Even with a proper application to the City of Bainbridge, a permit will not be issued for any house that does not comply with all of the City of Bainbridge building codes to be placed in any residential zone in the City of Bainbridge, *with the single exception in favor of mobile homes with the HUD*

sticker and, upon proper application to the City of Bainbridge, mobile homes with the HUD sticker can be placed in mobile home subdivisions or in mobile home parks (T., pg. 106, line 10 thru pg. 108, line 1), even though they do not comply with the City of Bainbridge's building codes.

-31-

Even houses that comply with the code cannot be placed anywhere in the City of Bainbridge without first obtaining a permit (T., pg. 109, lines 13-18), and there are mobile home parks/subdivisions in the City of Bainbridge in which the Defendant is not precluded from placing a home bearing a HUD sticker.

-32-

The Zoning Ordinances of the City of Bainbridge do not address the subject of quality of manufacture of mobile homes independent of the DCA and HUD sticker provisions (T., pg. 115, lines 6-9).

-33-

Defendant was advised by certified mail dated December 13, 1995, which she acknowledged that she received, among other things, that:

> "The Zoning Ordinance can only be changed or modified by the Mayor and City Council.
>
> If you would like to appear before the City Council to further discuss your mobile home dilemma, please contact City Manager Charles Tyson so that he can schedule you for the next City Council meeting to be held on December 19,1995."

Defendant did not ask Mr. Tyson to arrange for Defendant's appearance before the City Council, nor did Defendant go before the City Council or the Mayor. (Plaintiff's Exhibit 5; T., pg. 212, line 13 thru pg. 213, line 3).

-34-

Plaintiff was notified that her "mobile home" was in violation of the City of Bainbridge's zoning ordinance without ay regard to the standards of Plaintiffs mobile home. See *Burton* at 9.

-35-

The Defendant ignored the notice by Charles R. Seymour, Building Official/Zoning Administrator of the City of Bainbridge on September 5, 1995, described in Finding of Fact 7 and the further notices in Finding of Facts 11 and 12 and "never slowed down" in completing the installation of the mobile home on her property within the City Limits of Bainbridge (T., pg. 213, line 23 thru pg. 214, line 1).

-36-

Defendant did not raise a constitutional attack against the Zoning Ordinance before or to the governing authority of Plaintiff prior to filing her answer to the Plaintiffs Complaint For Injunctive Relief in this case.

-37-

The Zoning Ordinance of the City of Bainbridge was admitted in evidence as Plaintiffs Exhibit 8 without objection (T., pg. 23, lines 18-20).

-38-

The evidence of Defendant was factually insufficient to show by clear and convincing evidence that she will suffer a significant detriment under the existing zoning of her property or that the existing zoning bears an insubstantial relationship to the public interest. See *Gradous v. Bd. of Commissioners of Richmond County*, 256 Ga. 469, 471 (1986), citing, 250 Ga. 658 (1983). *Brown v. Dougherty County*

-39-

The evidence of Plaintiff was factually sufficient to establish that the existing zoning of Defendant's property bears a substantial relationship to the public interest. See *Gradous* at 471.

CONCLUSIONS OF LAW

-1-

The Zoning Ordinances of the City of Bainbridge, having been admitted into evidence without objection, is presumed to be valid.

-2-

The evidence of Defendant was legally insufficient to show by clear and convincing evidence that she will suffer a significant detriment under the existing zoning of her property or that the existing zoning bears an insubstantial relationship to the public interest. See *Gradous* at 471.

-3-

The evidence of the Plaintiff was legally sufficient to establish that the existing zoning of Defendant's property bears a substantial relationship to the public interest. See *Gradous* at 471.

-4-

The Court is aware of the *Scurlock v. City of Lynn Haven, Fla.*, 858 F.2d 1521(11th Cir. 1988) decision, but it appears that *Scurlock* does not apply in this case. The City of Bainbridge has not imposed greater safety requirements for a mobile home than the HUD standards and requirements; therefore, *Scurlock* does not apply in this case.

-5-

The preemption doctrine does not apply since the City of Bainbridge's ordinance does not conflict with any HUD

requirements nor deal with construction and safety and does not impose any additional requirements on a home with a HUD sticker. See *Scurlock* at 1524.

-6-

The City of Bainbridge's zoning ordinance is rationally and reasonably calculated to protect the safety and general welfare of the community by regulating the quality of housing stock. See *Burton* at 10.

-7-

The City of Bainbridge's zoning ordinance establishes rational and reasonable guidelines by which prospective home buyers can determine which parts of the city will accommodate housing stock commensurate to their preferences and desires. See *Burton* at 10.

In order for Defendant to raise a question as to the constitutionality of the City of Bainbridge's zoning ordinance, Defendant must show: (1) the ordinance or the particular parts of the ordinance which the Defendant challenges, stated with fair precision; (2) the provision of the Constitution, which the ordinance is claimed to violate, must be clearly designated; and (3) wherein the ordinance, or some designated part of it, violates such constitutional provision. *Richmond Concrete Products Co., Inc. v. Ward*, 212 Ga. 773, 774-75 (1956), *reversed on other grounds by State v. Crane*, 224 Ga. 643 (1968).

-9-

It appearing that Defendant has failed to clearly designate the violated provision of the Constitution and how the ordinance violates the Constitution, Defendant has failed to meet her burden. See *Richmond Concrete* at 774-75.

Based on this Court's Conclusions of Law, the City of Bainbridge's zoning ordinance is found to be constitutional, and Defendant has failed to provide clear and convincing evidence otherwise.

-11-

That the Defendant is in violation of the Zoning Ordinance of the City of Bainbridge in each of the ways alleged by the Plaintiff in its Complaint.

IT IS THEREFORE, CONSIDERED, ORDERED AND DECREED by the Court that the zoning ordinance in question is constitutional, Plaintiff's prayer for an interlocutory and a permanent injunction is hereby granted, Defendant is hereby enjoined from continuing to violate the Zoning Ordinance of the City of Bainbridge in the ways specified in the Complaint and in any other way, and Defendant is hereby ordered to remove the mobile home described in the Complaint from that portion of her land that lies within the City Limits of Bainbridge within ninety (90) days of the date of this Order.

This 26th day of September, 2001.

/s/ J. Richard Porter, III
J. RICHARD PORTER, III
Judge, Superior Court of
Decatur County, Georgia

Prepared by the Court

APPENDIX D

ZONING ORDINANCE
CITY OF BAINBRIDGE, GEORGIA

(Plaintiff's Exhibit 8)

[Logo]

Adopted October 20, 1987
Amended January 5, 1988
Amended July 6, 1993

Prepared by:
Southwest Georgia Regional Development Center

ZONING ORDINANCE
CITY OF BAINBRIDGE, GEORGIA

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ZONING ORDINANCE

CITY OF BAINBRIDGE GEORGIA

PREAMBLE

An Ordinance of the City of Bainbridge. Georgia, to regulate and restrict the use of land and buildings by dividing the City of Bainbridge into districts; defining certain terms used therein; imposing regulations, prohibitions and restrictions governing the erection, construction and reconstruction

of structures and buildings and the use of lands for business, industry, residence. social and other specified purposes; regulating and limiting the height of buildings and open spaces; regulating and limiting the density of population; limiting congestion on the public streets by providing for off-street parking and loading of vehicles; providing for the gradual elimination of non conforming uses of land, buildings and structures; establishing the boundaries of districts; providing the means of enforcing said Ordinance and providing a penalty for violation of said Ordinance, and repealing conflicting ordinances.

ARTICLE I
INTRODUCTION

Section 1.01. Short Title. This Ordinance shall be known as the Zoning Ordinance of the City of Bainbridge.

Section 1.02. Authority for Enactment The Mayor and Council of the City of Bainbridge enact this Ordinance under the exercise of powers conferred upon it by the Georgia State Constitution, Article IX, Section II, Paragraph IV.

ARTICLE II
DEFINITIONS

ACCESSORY BUILDING: A subordinate building or structure on the same lot, or part of the main building, occupied by or devoted exclusively to an accessory use.

ACCESSORY USE: A use naturally and normally incidental to, subordinate to, and auxiliary to the permitted use of the premises.

ADAPTIVE RE-USE: The development of a new use for an older building or for a building originally designed for a special or specific purpose. Adaptive reuse is particularly useful as a technique for preserving older buildings or historic or architectural significance in the Central Business District of the City.

APARTMENT HOUSE: A residential structure containing three (3) or more apartments.

BILLBOARD: Any construction or portion thereof upon which a sign or advertisement is placed, painted, or otherwise designated for the purpose of making anything known to the general public, but not including bulletin boards used to display official court or public office notices.

BOARD OF ZONING APPEALS: The words "Board of Zoning Appeals" or, "Board" shall mean the Board of Zoning Appeals of the City of Bainbridge.

BOARDING HOUSE: A dwelling where meals or lodging and meals, are provided for compensation to three or more persons by pre-arrangement for definite periods. A boarding house is to be distinguished from a hotel, motel or a nursing home.

BUILDING, PRINCIPAL: A building in which is conducted the principal use of the lot on which it is located.

BUILDING HEIGHT: The vertical distance measured from the curb level to the highest point of the roof surface, if a flat roof: to the deck line of mansard roofs; and to the mean height level between eaves and ridge of gable, hip, and gambrel roofs.

CLINIC: A professional office where the services of more than one practitioner can be obtained and where patients are studied or treated on an out-patient basis and where no over-night accommodations are provided.

COMMISSION: The word "Commission" shall mean the Planning Commission of Bainbridge.

CONVALESCENT HOME: A convalescent home is a home for the care of children or the aged or infirm, or a place of rest for those suffering bodily disorders, wherein two or more persons are cared for. Said home shall conform and qualify for license under State laws.

CONDOMINIUM HOME: A form of ownership of less than the whole of a building or system of buildings under a statute which provides the mechanics and facilities for formal filing and recording of divided interest in real property, whether the division is vertical or horizontal.

DAY CARE FACILITY: A day care facility is any individual or jointly owned facility designated to offer care and/or training to children unrelated to the owner or director for any part of a day on some kind of a regular basis. Such facility may or may not be operated for profit. Day care is not a baby-sitting service to be used for the convenience of the parents at irregular intervals (Drop-ins).

DENSITY: The number of families residing on, or dwelling units developed on an acre or land. As used in this ordinance, all densities are stated in families per gross acre.

DRIVE-IN ESTABLISHMENT: A business establishment, other than a drive-in restaurant. so developed that its retail or service character is dependent on providing a driveway approach or parking spaces for motor vehicles so as to serge patrons while in the motor vehicle.

DRIVE-IN RESTAURANT: A drive-in restaurant or other drive-in establishment serving food and/or drink so developed that its retail or service character is dependent on providing a driveway approach or parking spaces for motor vehicles so as to serve patrons while in the motor vehicle.

DWELLING, SINGLE FAMILY: A building or portion thereof used or designed for use as a residence for a single family.

DWELLING, MULTIPLE: A building or portion thereof used or designed as a residence for three or more families living independently or each other and doing their own cooking in said building. This definition includes three-family

houses, four-family houses, and apartment houses, but does not include hotels, motels, trailer camps or mobile home parks.

FAMILY: One or more persons living together and related by blood, marriage, or legal adoption, and occupying a dwelling unit as a single non-profit housekeeping unit as distinguished from a group occupying a hotel, club. boarding house, fraternity or sorority house. A family shall be deemed to include domestic servants. gratuity guests, and not more than three foster or boarded children whose room and board is paid by a recognized child care agency or organization.

FLEA MARKET: A market at which second hand articles are displayed and sold.

GARAGE, PRIVATE: An accessory building designed or used for the storage of not more than three motor driven vehicles owned and used by the occupants of the building to which it is accessory.

GARAGE, PUBLIC: Any premises used for the storage or care of motor driven vehicles, or place where any such vehicles are equipped for operation, repaired or kept for remuneration. hire or sale.

GROUP HOME: A group home is a residential use (home) of a property in residential areas of the City of Bainbridge for the care of individuals in the home environment which have mental and/or developmental disabilities or individuals who will benefit socially from living in a group environment. All group homes must be licensed by the appropriate state agency.

GUEST HOUSE: A building or portion thereof used or designed for uses as a residence, specifically as an accessory use to be the principal building.

HALF-WAY-HOME: A group home facility which is licensed or supervised by any Federal, State, or County health/welfare agency relating to drug abuse problems, offender rehabilitation or similar purposes.

HOME OCCUPATION: Any use conducted entirely within the dwelling and carried on by the inhabitants thereof, which use is incidental and secondary to the use of the dwelling for dwelling purposes and does not change the character thereof. Provided further, that no article or service is sold or offered for sale on the premises, except such as is produced by such occupation; that such occupation shall not require internal or external alterations or construction features, equipment, machinery, outdoor storage, or signs not customary in residential areas. One (1) non-illuminated name plate, which is not more than two (?) square feet in area. may be attached to the building which shall contain only the name and occupation of the resident of the premises. Clinics. hospitals, barber shops, beauty parlors, and child care center day nurseries, among others. shall not be deemed to be home occupations.

KENNEL: Any lot or premises on which three (3) or more dogs, four (4) months or more old. are kept either permanently or temporarily, for purpose of sale, care, breeding or training for which any fee is charged.

MINI-WAREHOUSE: A buildings s that contains varying sizes or individual. compartmentalized and control-access stalls or lockers for storing the excess personal property of an individual or family. No business activities other than the rental of storage units shall be conducted on the premises.

MOBILE HOME: "Mobile Home" is a detached single family dwelling unit, designed for longterm occupancy, which has been prefabricated and then transported to its site or to a sales lot usually on its own wheels, except the units commonly referred to as the "Double-wiles", and requires

only minor work before occupancy such as connection to utilities or to a foundation. Such units are usually fully equipped and furnished. Mobile Homes must bear the insignia issued by the U. S. Department of Housing and Urban Development (H. U. D.) All mobile homes within the City of Bainbridge will either be located within a mobile home park or mobile home subdivision.

MOBILE HOME PARK: "Mobile Home Park" shall mean a licensed business operation which leases spaces for permanent or for temporary occupancy for periods exceeding thirty (30) days for mobile homes and, under some conditions, travel trailers.

MOBILE HOME SUBDIVISION: A "Mobile Home Subdivision" is defined as at least a three (3) acre site which has been designed for the subdivision of individual lots for exclusive mobile home development.

MODULAR HOMES: "Modular Homes" means a factory-fabricated single family dwelling which is constructed in one or more sections. "These units are manufactured in accordance with the Georgia Industrialized Building Act and the rules of the Department of Community Affairs issued pursuant thereto." Each unit must bear a seal of approval issued by the Commissioner of DCA.

OPEN AIR BUSINESS USES: Open air business uses shall include the following:

a. Retail sale of trees, shrubbery, plants, flowers, seed, topsoil, humus, fertilizer, trellises, lawn furniture, playground equipment and other home garden supplies and equipment.

b. Retail sale of fruit and vegetables.

c. Miniature golf, golf driving range, children's amusement park or similar recreation uses.

d. Bicycle, trailer. motor vehicles. boats or home equipment sales, service or rental services.

e. Outdoor display and sale of garages, swimming pools, and similar use.

PLANNED UNIT DEVELOPMENT: A Planned Unit Development is a single parcel of land within which a number of buildings are located or intended to be located in accordance with an overall plan of design and not in relation to a prearranged pattern of land subdivision. Examples of a Planned Unit Development (P.U.D.) include a complex of apartment buildings or a shopping center with a number of stores.

SERVICE STATION: A building or structure designed or used for the retail sale or supple of fuels, lubricants, air, water and other operating commodities for motor vehicles, aircraft or boats. and including the customary space and facilities for the installation of such commodities on or in such vehicles, and including space for facilities for the temporary storage of vehicles not over forty-eight (48) hours, minor repair, or servicing, but not including buffing, painting, refinishing, steam cleaning, rust-proofing, or high speed washing thereof.

SIGN, OUTDOOR ADVERTISING: Any card, cloth, paper, metal, glass, plastic, wood. plaster, stone or sign of other material of any kind, placed for outdoor advertising purposes on the ground or on any tree. wall, bush, rock, post, fence, building, structure, or thing whatsoever. The term "placed: as used in the definition of "Outdoor Advertising Sign", and "Outdoor Advertising Structure'' shall include erecting, constructing, posting, painting, printing, tacking, nailing, gluing, sticking, carving or other fastening, affixing or making visible in any manner whatsoever. See also ''BILLBOARD".

TOWN HOUSE: One of a group of two or more attached single family residences. Each town house unit is separated from the adjoining unit or units by an approved fire wall or

walls. Fire walls shall be located on the lot line. Each town house has a front and rear ground level entrance. The town house is located on its own approved. recorded "lot".

VARIANCE: A variance is a relaxation of the terms of the Zoning Ordinance where such variance will not be contrary to the public interest and where, owing to conditions peculiar to the particular property and not the result of any action of the applicant, a literal enforcement of this Ordinance's requirements would result in unnecessary and undue hardship (see Section 22.10).

ARTICLE VII
R4A, SINGLE FAMILY RESIDENTIAL DISTRICT

Section 7.01. STATEMENT OF PURPOSE. The Single Family Residential District is established as a district in which the principal use of land is for single family dwellings. For the single family residential district, the specific intent of this Section is:

a. To encourage the construction of and the continued use of the land for single family dwellings.

b. To discourage any land use which would generate traffic on minor or local streets, other than normal traffic to serve the residences on those streets.

Section 7.02. PERMITTED USES.

a. Single family detached dwellings, except mobile homes.

b. Accessory buildings or uses customarily incidental to any of the permitted uses, when located on the same lot and not involving any business, profession, trade or occupation. One (1) private garage for each residential lot in which there are housed not more than four (4) automobiles, not more than one (1) of which may be a commercial vehicle not larger than a regularly manufactured pick-up or panel truck of 7500

lbs. gross vehicle weight capacity, which shall be housed within a garage and provided said commercial vehicle is owned *and* operated by a member of the family that resides in said living unit.

Section 7.03. USES PERMITTED AFTER SPECIAL REVIEW BY THE PLANNING COMMISSION AND APPROVED BY THE CITY COUNCIL.

a. Churches, provided that the proposed site is not less than two (2) acres and a complete site development sketch is submitted with the application and provision is made for off-street parking.

b. Public and private schools.

c. Recreational developments.

d. Cemeteries, provided that a complete site development sketch is submitted with the application.

e. Clubs and fraternal organizations not operating for profit provided that:

   1. The buildings are not placed closer than fifty (50) feet to any property lines; and

   2. There is a planted buffer-strip at least ten (10) feet wide along the side and rear lot lines.

f. Public buildings, structures or land uses.

g. Hospitals and clinics.

h. Home Occupations—Home occupations as limited and defined in Article II.

ARTICLE VIII
R-1, SINGLE-FAMILY RESIDENTIAL DISTRICT

Section 8.01. STATEMENT OF PURPOSE. The Single-Family Residential Districts are established as districts in which the principal use of land is for single-family dwellings. For the R-1 single-family residential districts, in promoting the general purpose of these regulations. the specific intent of this Section is:

a. To encourage the construction of, and the continued use of the land for single-family dwellings.

Section 8.02. PERMITTED USES

Any permitted use in the R-1 A district, except mobile homes.

Section 8.03. USES PERMITTED AFTER SPECIAL REVIEW BY THE PLANNING COMMISSION AND APPROVED BY THE CITY COUNCIL.

a. Any use listed under Section 7.03 of R-1 A district.

Section 8.04. AREA, HEIGHT, AND PLACEMENT REQUIREMENTS. (In accordance with the Schedule of Regulations. Article XX).

ARTICLE IX
R-2. TWO-FAMILY AND MULTIPLE-FAMILY RESIDENTIAL DISTRICT

Section 9.01. STATEMENT OF PURPOSE, The intent of the R-2 Residential District is to provide for medium to higher density residential development; to provide for variety in the City's housing stock, to encourage neighborhood maintenance and preservation by allowing the conversion of large single-family homes to two family and multi-family use; and to provide suitable areas for new multi-family development.

Section 9.02. PERMITTED USES.

a. Any use permitted in the R-1 residential district, except mobile homes.

b. Two family (Duplex) residential.

c. Multi-family (apartments and condominiums) *

d. Townhouses (subject to the provisions of Article XI, Sections 11.04 through 11.07.)

Section 9.03. USES PERMITTED AFTER SPECIAL REVIEW BY THE PLANNING COMMISSION AND APPROVAL BY THE CITY COUNCIL.

a. Mortuaries.

b. Cemeteries.

c. Professional offices.

d. Public and private schools.

e. Public Buildings.

f. Art, music, photographic and dance studies.

g. Recreation development.

h. Boarding homes.

i. Home occupations.

j. Clinics.

k. Hospital and rest homes.

l. Nursery school, kindergarten, day care facilities.

m. Half-way houses.

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* For development of apartment units of only one building on a given site. The R-PUD development standards Article X, Sections 10.05 through 10.08, will apply to multiple dwellings of more than one building on a given site.

n. Other uses similar to the above and compatible with the local neighborhood and environment as interpreted by the Planning Commission and approved by the City Council.

Section 9.04. AREA HEIGHT AND PLACEMENT REQUIREMENTS. (In accordance with the Schedule of Regulations, Article XX).

ARTICLE X
R-PUD, RESIDENTIAL PLANNED UNIT DEVELOPMENT DISTRICT

Section 10.01. STATEMENT OF PURPOSE. It is the intention of this section to provide areas of sufficient size and allowing reasonable flexibility in design and orientation for the establishment of a structure, or group of structures, which includes multiple dwellings designed in a planned unit development of more than one building on a given site.

Therefore, the Zoning Ordinance regulations relative to area, height, bulk and placement may, in the Planned Unit Development District, be modified by the Planning Commission and City Council, in the case of a plan for a large scale development which, in the judgment of the Planning Commission and City Council, provides adequate open space and improvements for circulation. recreation, light, air and service needs of the tract when fully developed, provided that in no case may the density of the proposed planned unit development exceed 13 dwelling units per acre and provided further that the minimum site size for the residential planned unit development is three (3) acres.

Section 10.02. PROCEDURES FOR PUD (R-PUD, C-PUD) APPROVAL. Any proposed property for PUD development must first be rezoned to the appropriate (R-PUD or CPUD) zoning classification. The PUD rezoning procedure will generally follow the same procedures as other rezoning

requests. However, the applicant for PUD zoning shall submit a preliminary site development plan of the proposed development at the same time a petition for PUD zoning is made.

No rezoning for PUD will be granted to a petitioner until the preliminary site plan is reviewed by the Planning Commission and approved by the City Council, respecting other property rezoning criteria established by the City.

Section 10.03. PERMITTED USES. In all R-PUD Districts, no building or land, except as otherwise provided in this Ordinance, shall be erected or used except for one or more of the following specified uses:

a. One, two, and multi-family dwelling units including town house dwellings.

b. Mobile home parks, provided that the density of the proposed mobile home park shall not exceed ten (10) dwelling units per acre and provided further that the minimum size of the proposed mobile home park shall be not less than four (4) acres, and meet appropriate design standards.

Section 10.04. USES PERMITTED AFTER SPECIAL REVIEW BY THE PLANNING COMMISSION AND APPROVAL BY THE CITY COUNCIL.

Any use listed under Sections 9.03 of R-2 District.

Section 10.05. PRELIMINARY REVIEW. Preliminary review is recommended as an aid to both the developer and to the City. Under this procedure, a developer provides the information which is described below and the Planning Commission then acts on the information provided. This review is intended to then serve as a guide for the immediate inspection of the Planning Commission, subject to a thorough study and analysis. Changes and additions which may have to

be made before a mutual agreement is reached can be made at such time without excessive engineering costs to the developer.

Section 10.06. PROCEDURE FOR PRELIMINARY APPROVAL. An application shall be submitted to the Planning Commission by the owner or his authorized representative for

Supreme Court, U.S.
FILED
AUG 13 2003
OFFICE OF THE CLERK

No. 03-75

In The

Supreme Court of the United States

ETHEL KING KNIGHT A/K/A ANNIE ETHEL KING,

Petitioner,

v.

CITY OF BAINBRIDGE, GEORGIA,

Respondent.

On Petition For A Writ Of Certiorari To The Georgia Supreme Court

RESPONSE TO PETITION FOR WRIT OF CERTIORARI

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PERCEIVED MISSTATEMENT OF FACTS OR LAW IN THE PETITION THAT BEARS ON WHAT ISSUES WOULD PROPERLY BE BEFORE THE COURT IF CERTIORARI WERE GRANTED

Petitioner states the "Question Presented" as follows:

> "Whether the zoning ordinance of the City of Bainbridge, Georgia which ***for safety reasons, based entirely upon construction standards***, restricts the placement of HUD stickered manufactured housing units within the corporate limits of the City to mobile home parks and/or mobile home subdivisions is constitutional." (Emphasis supplied)

The inclusion of the words "for safety reasons, based entirely upon construction standards" in Petitioner's "Question Presented" constitute to Respondent a "perceived misstatement of fact or law in the petition that bears on what issues properly would be before the Court if certiorari were granted." (U.S. Supreme Court Rule 15)

This conclusion of Respondent is based on the following Findings of Fact by the Trial Court or by the Supreme Court of Georgia:

(a) Trial Court:

FINDINGS OF FACT:

(1) Findings of Fact No. 30 – Page 20a of Petition for Writ of Certiorari: "Even with a proper application to the City of Bainbridge, a permit will not be issued for any house that does not comply with all of the City of Bainbridge building codes to be placed in any residential zone in the City of Bainbridge, ***with***

the single exception in favor of mobile homes with the HUD sticker and, upon proper application to the City of Bainbridge, mobile homes with the HUD sticker can be placed in mobile home subdivisions or in mobile home parks (T., pg. 106, line 10 thru pg. 108, line 1), ***even though they do not comply with the City of Bainbridge's building codes***." (Emphasis supplied)

(2) Findings of Fact No. 32 – Page 21a of the Petition for Writ of Certiorari: "The Zoning Ordinances of the City of Bainbridge ***do not address the subject of quality of manufacture of mobile homes independent of the DCA and HUD sticker provisions*** (T., pg. 115, lines 6-9)." (Emphasis supplied)

CONCLUSIONS OF LAW:

(1) Conclusions of Law No. 4 – Page 23a of the Petition for Writ of Certiorari: "The Court is aware of the *Scurlock v. City of Lynn Haven, Fla.*, 858 F.2d 1521 (11th Cir. 1988) decision, but it appears that *Scurlock* does not apply in this case. ***The City of Bainbridge has not imposed greater safety requirements for a mobile home than the HUD standards and requirements***; therefore, *Scurlock* does not apply in this case." (Emphasis supplied)

(2) Conclusions of Law No. 5 – Page 23a of the Petition for Writ of Certiorari: "The preemption doctrine does not apply

since ***the City of Bainbridge's ordinances do not conflict with any HUD requirements nor deal with construction and safety and do not impose any additional requirements on a home with a HUD sticker***. See *Scurlock* at 1524." (Emphasis supplied)

(b) Supreme Court of Georgia [*King v. City of Bainbridge*, 276 Ga. 484 (577 S.E.2d 772) (2003)]:

(1) Page 3a of the Petition for Writ of Certiorari: "Thus, any attempt to place higher construction standards on mobile homes than those established under the Act is invalid. ***However, nothing in the Act prevents localities from excluding mobile homes from certain zoning districts***. The City's zoning ordinance creates such an exclusion. Under the City's ordinance, mobile homes must bear the HUD certification label and these homes are specifically excluded from the R-2 zoning district: 'Permitted uses. (a) Any use permitted in the R-1 residential district, except mobile homes.' ***By excluding HUD-certified mobile homes from the R-2 district, the City has not imposed any safety or construction requirement on the homes, but has simply determined that this type of housing is inappropriate in an R-2 district***." (Emphasis supplied)

(2) Page 3a of the Petition for Writ of Certiorari: "***Because the City has not***

infringed on the federal government's control over safety and construction standards for mobile homes, its zoning ordinance is not preempted by the Act." (Emphasis supplied)

(3) Page 4a of the Petition for Writ of Certiorari: "Thus, a modular home is not simply a mobile home with a DCA sticker; instead modular homes and mobile homes are distinct uses, which both the state and federal statutes recognize, and the City's different treatment of them in its zoning ordinance is not an infringement on federal safety standards for mobile homes."

(4) Page 5a of the Petition for Writ of Certiorari: "***The City does not rely on its safety codes, as Lynn Haven did, but instead excludes HUD-certified mobile homes from R-2 districts regardless of safety and construction standards.***" (Emphasis supplied)

(5) Page 7a of the Petition for Writ of Certiorari: "The evidence in this case showed that the City's purpose in restricting mobile home placement was ***to regulate the quality of housing stock and promote general safety concerns.*** These reasons are not arbitrary or unreasonable and bear a substantial relation to the public health, safety, and general welfare. Therefore, the City's ordinance is not unconstitutional." (Emphasis supplied)

The above quoted Findings of Fact and Conclusions of Law by the Supreme Court of Georgia and by the Trial Court indicate to Respondent that the statement by Petitioner in the "Question Presented" [Page (i) of the Petition for Writ of Certiorari] that the placement of HUD stickered manufactured housing units within the corporate limits of the City of Bainbridge to mobile home parks and/or mobile home subdivisions was ***"based entirely upon construction standards"*** is a "perceived misstatement of facts or law in the Petition that bears on what issues properly would be before the Court if certiorari were granted." (U.S. Supreme Court Rule 15.2)

This is particularly true, considering the above Finding of Fact made by the Supreme Court of the State of Georgia that "The City does not rely on its safety codes, as Lynn Haven did, but instead excludes HUD-certified mobile homes from R-2 districts ***regardless of safety and construction standards***." (Pg. 5a of Petition for Writ of Certiorari) (Emphasis supplied) And the concluding paragraph of the Judgment of the Supreme Court of Georgia that "The evidence in this case showed that the City's purpose in restricting mobile home placement was ***to regulate the quality of housing stock and promote general safety concerns***. These reasons are not arbitrary or unreasonable and bear a substantial relation to the public health, safety, and general welfare. Therefore, the City's ordinance is not unconstitutional." (Pg. 7a of Petition for Writ of Certiorari) (Emphasis supplied)

REASON FOR DENYING THE WRIT

The Trial Court, the Supreme Court of Georgia, and Respondent acknowledges that the regulation of construction standards for mobile homes bearing a HUD sticker has been preempted by Federal law and regulations, but denies that Respondent has made any effort to regulate construction standards of mobile homes. As noted by the Supreme Court of Georgia in its decision in this matter "The City does not rely on its safety codes, as Lynn Haven did, but instead excludes HUD-certified mobile homes from R-2 districts ***regardless of safety and construction standards***." (Pg. 5a of Petition for Writ of Certiorari) (Emphasis supplied)

The Supreme Court of Texas in *City of Brookside Village v. Homer N. Comeau, et ux.*, 633 SW2d 790, at pg. 796, states:

> "The referenced state and federal regulation has, to an extent, preempted the field as to ***construction, safety, and installation*** of mobile homes. We find nothing in the statutes, however, that creates a conflict with Brookside Village ordinance regulating the ***location*** of mobile homes. Accordingly, Ordinances 58 and 78, insofar as they do not pertain to the subject matter of the regulation under the Federal and State acts are upheld as compatible with Federal and State legislations."

(Emphasis supplied.) ***The same is true of the Zoning Ordinance of the City of Bainbridge. The City of Bainbridge Zoning Ordinance regulates the location of mobile homes, and not the construction, safety, and installation of mobile homes.***

It is interesting to note that the Supreme Court of the United States denied the petition of Homer N. Comeau for

writ of certiorari to the Supreme Court of Texas. (459 U.S. 1087, 103 S.Ct. 570)

In *Burton v. The City of Alexander City, Alabama*, 2001 WL 527415 (M.D. Ala. 2001) cited by Petitioner in both her brief to the Supreme Court of Georgia and to this Court, the Court stated:

> "But while Scurlock's holding is broad, it cannot be stretched as far as Plaintiffs would like. Plaintiffs, in effect, contend that the 1974 Act prevents a community from using zoning ordinances to limit the siting of manufactured homes within its jurisdiction. ***This argument is untenable. Neither the Act nor the regulations extinguish the time-honored ability of local communities to regulate the placement of a home without regard to the federally-required construction and safety standards for the home itself.***" (Emphasis supplied.)

Respondent has not overlooked the comment on page 4 of the Petition for Writ of Certiorari that indicates that the Ordinance in question might represent "a prejudice based upon economic capacity against those poor people who cannot afford better" (Pg. 4 of Petition for Writ of Certiorari) and has not overlooked the statement in the Conclusion of the Petition for Writ of Certiorari suggesting that the United States Supreme Court should consider the matter "to protect the home ownership rights of poor people." (Pg. 6 of Petition for Writ of Certiorari) Respondent has not addressed these statements as they were not raised in the pleadings, ruled on by the Trial Court, or either considered or ruled upon in the decision of the

Supreme Court of Georgia, which is the subject of this Petition for Writ of Certiorari.

CONCLUSION

Therefore, because the Courts below have properly interpreted the law, as demonstrated by the opinions below, that there is no factual or legal basis for the Petitioner's claims, the Respondent respectfully requests this Court to deny the Petition for Writ of Certiorari.

Respectfully submitted,

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